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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

THOMAS H. PILLSBURY, JR. AND  
MELODY PILLSBURY

Plaintiffs,

vs.

PBF ENERGY, INC. AND JEFFERS  
CRANE SERVICE, INC.

Defendant(s).

) Case No.: 2:20-cv-09301-MCA-LDW

) JUDGE MADELINE COX ARLEO

) **PLAINTIFF'S RESPONSE IN  
OPPOSITION TO DEFENDANT PBF  
ENERGY, INC.'S MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM AND  
IMPROPER VENUE**

) **DATE: September 8, 2020**

Plaintiffs, Thomas H. Pillsbury, Jr. and Melody Pillsbury file their Response in Opposition to Defendant PBF Energy, Inc.'s Motion to Dismiss for Failure to State a Claim and Improper Venue set on this Court's docket for September 8, 2020. Defendant's Motion is improper and without merit and should be denied. A Memorandum in Support of this Motion is attached.

1 DATED: August 25, 2020

2  
3 Respectfully submitted,

4 THE BUZBEE LAW FIRM

5 /s/ Cornelia Brandfield-Harvey

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19 Defendant(s).

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) JUDGE MADELINE COX ARLEO  
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) **PLAINTIFF'S MEMORANDUM IN**  
) **SUPPORT OF THEIR RESPONSE IN**  
) **OPPOSITION TO DEFENDANT PBF**  
) **ENERGY, INC.'S MOTION TO DISMISS**  
) **FOR FAILURE TO STATE A CLAIM AND**  
) **IMPROPER VENUE**

) **DATE: September 8, 2020**  
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**I. FACTUAL BACKGROUND**

On or about April 1, 2020, Plaintiff THOMAS H. PILLSBURY, Jr. was in the course and scope of his employment with Universal Plant Services, Inc. as a foreman at the Premises known as the Toledo refinery in Toledo, Ohio.<sup>1</sup>

Defendant PBF Energy, Inc. (“PBF”) is the owner of the Premises known as Toledo refinery, in Toledo, Ohio.<sup>2</sup> Defendant PBF runs and manages this specific refinery in Toledo made the basis of this lawsuit.

Secretary of State filings show that Toledo Refining Company LLC is indeed wholly owned by its parent company Defendant PBF Energy, Inc.<sup>3</sup> PBF is responsible for capital expenditures and workforce decisions which emanate from its headquarters in New Jersey.<sup>4</sup> In order to even find information about the Toledo refinery, one is directed to PBF Energy’s *own* website, as can be seen in the image below with the web address of [www.pbfenergy.com](http://www.pbfenergy.com).<sup>5</sup> Specifically, the website states “PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States.”<sup>6</sup>

On PBF Energy’s website there is a list of refineries that PBF owns, manages and runs located under the Refineries tab, including the Toledo refinery in Toledo, Ohio as can be seen in the image below<sup>7</sup>:

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<sup>1</sup> See Complaint ¶¶ 1 and 4.

<sup>2</sup> See Exhibit A, 2018 Annual Report of PBF Energy, Inc. (“PBF Energy holds a 99.0% economic interest in PBF LLC as of December 31, 2018 through its ownership of PBF LLC Series C Units, which are held solely by PBF Energy. PBF LLC, together with its consolidated subsidiaries, owns and operates oil refineries and related facilities in North America. Toledo Refining Company LLC (“Toledo Refining” or “TRC”) is PBF LLC’s principal operating subsidiaries and are all wholly-owned subsidiaries of PBF Holding.”)

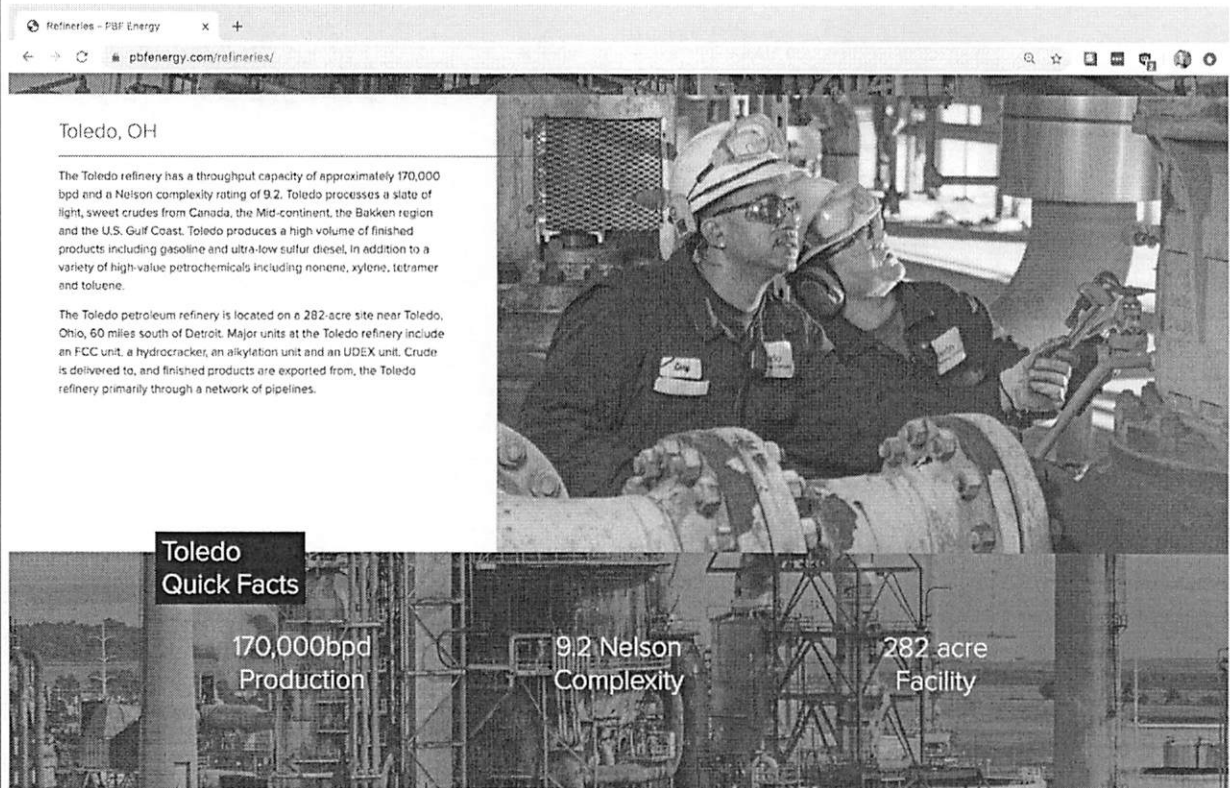
<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Exhibit B, PBF Energy, Inc. Website, Refineries, p. 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



Further, in PBF Energy, Inc.'s 2018 annual report, PBF refers to the Toledo refinery as one of "Our Refineries" as seen in the image below<sup>8</sup>:

## Our Refineries

The figures below are based off of our 2018 operations:

TORRANCE REFINERY	CHALMETTE REFINERY	TOLEDO REFINERY	DELAWARE CITY REFINERY	PAULSBORO REFINERY
Processes 88% heavy and medium crude oils	Exported over 22% of its total production	Yields 92% high-value products including gasoline, distillate and chemicals	64% of East Coast coking capacity	36% of East Coast coking capacity

Additionally Chairman and CEO of PBF Energy, Inc. Thomas Nimbley, stated in his address to shareholders that

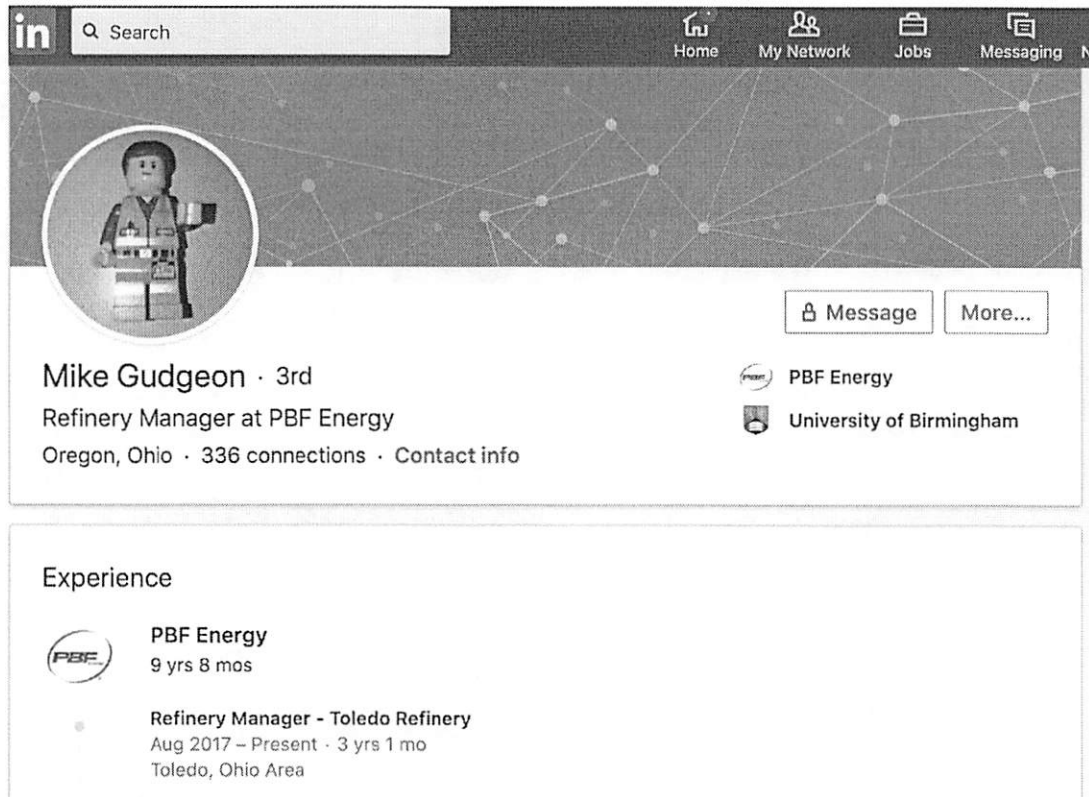
"We completed major turnarounds at our Chalmette, Toledo, Paulsboro and Delaware City refineries."<sup>9</sup>

<sup>8</sup> See Exhibit A.

<sup>9</sup> *Id.*



PBF Energy even has its own refinery manager for the Toledo Refinery, Mike Gudgeon, whose job title is **Refinery Manager-Toledo Refinery at PBF Energy** as seen on his LinkedIn Page, who no doubt runs operations for PBF Energy at the Toledo refinery.<sup>10</sup>



An article that ran in a Toledo, Ohio newspaper *The Blade* in June 2019 concerning shutting down operations at the Toledo refinery in question because of a closed pipeline specifically named PBF as the owner of the refinery and quoted several PBF employees for the article who had intricate knowledge of the operations at the refinery.<sup>11</sup>

<sup>10</sup> See Exhibit C, LinkedIn page of Mike Gudgeon.

<sup>11</sup> See Exhibit D, Tom Henry, *Potential Line 5 closing has Toledo Refining Co., employees on edge*, *The Blade* (June 18, 2019), <https://www.toledoblade.com/local/environment/2019/06/18/toledo-refining-company-eyes-line-five-controversy-with-worries-about-shutdown-job-losses/stories/20190618002>.

1 Due to the facts laid out above, there can be no question that PBF Energy, Inc. owns, controls  
2 and operates the Toledo refinery made the basis of this lawsuit where Plaintiff sustained injuries.

3 Plaintiff was working on a turbine, blower and heat expander which provides heat fuel through  
4 the plant.<sup>12</sup> Defendant, PBF, as owner of the Premises, was responsible for the scheduling and  
5 coordinating of the work, including the subject lift that injured Plaintiff.<sup>13</sup> Defendant PBF was  
6 responsible for issuing work permits and ensuring the work conducted inside of the plant was being  
7 done safely.<sup>14</sup> Importantly, Defendant PBF reduced a significant amount of the work force at the  
8 plant.<sup>15</sup> This reduction left an insufficient number of workers to perform the job tasks safely.<sup>16</sup>

10 At the time and place aforesaid, Defendant PBF and/or its agents, servants and/or employees,  
11 were negligent, careless, reckless and/or unreasonable in performing and/or failing to perform such  
12 actions and/or such omissions so as to render the Premises unsafe for Plaintiff Thomas H. Pillsbury,  
13 Jr..<sup>17</sup>

15 As a direct and proximate result of the negligent, careless, reckless and/or unreasonable  
16 conduct of Defendant PBF, Plaintiff Thomas H. Pillsbury, Jr. suffered serious and permanent bodily  
17 injuries which necessitated obtaining medical treatment, including surgery, and expending large sums  
18 of money for medical care and attention, causing him pain and suffering, incapacitating him from  
19 pursuing daily activities and attending to his usual occupation and business and leaving him with  
20

22 <sup>12</sup> See Complaint ¶ 6.

23 <sup>13</sup> *Id.*

24 <sup>14</sup> *Id.*

25 <sup>15</sup> See Exhibit E, Laura Sanicola, PBF Toledo refinery to delay full restart after completing turnaround, Hydrocarbon  
26 Processing (April 6, 2020), <https://www.hydrocarbonprocessing.com/news/2020/04/pbf-toledo-refinery-to-delay-full-restart-after-completing-turnaround> (“the refinery has also drastically reduced contract maintenance workers in the plant  
27 in response to concerns over the spread of coronavirus, the sources said...”) See Exhibit F, Anna Larionova, Refinery  
operating at minimum rates due to COVID-19 hit, Market Report Company (March 31, 2020),  
[http://www.mrcplast.com/news-news\\_open-368419.html](http://www.mrcplast.com/news-news_open-368419.html) (“PBF Energy Inc said it was operating its refineries at  
minimum rates, with throughput about 30% lower than the refiner’s expectations, as coronavirus-driven travel curbs hit  
fuel demand”)

28 <sup>16</sup> *Id.*

<sup>17</sup> See Complaint ¶ 7.

1 permanent disabilities that will in the future similarly incapacitate him, cause him pain and suffering  
2 and require medical treatment.<sup>18</sup>

3 Defendant PBF Energy, Inc., (“PBF”) is the owner of the Premises and is a corporation  
4 organized under the laws of the Delaware, **which has its principal place of business at 1 Sylvan**  
5 **Way, 2nd Floor, Parsippany, New Jersey, in the Town of Parsippany-Troy Hills, County of**  
6 **Morris, State of New Jersey.**<sup>19</sup>

## 8 II. APPLICABLE LEGAL STANDARD

9 A claim for relief must contain “a short and plain statement of the claim showing that the  
10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). It is well settled that in reviewing a motion to  
11 dismiss, a court must accept a plaintiff’s allegations as true and construe them in the light most  
12 favorable to the plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). The court  
13 must then determine whether under any reasonable reading of the complaint, the plaintiff may be  
14 entitled to relief. *Id.* Importantly, the Supreme Court has made clear that a complaint need not contain  
15 detailed factual allegations; rather, it must contain “sufficient factual matter, accepted as true, to state  
16 a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).  
17 Plausibility “does not impose a probability requirement at the pleading stage; it simply calls for  
18 enough fact to raise a reasonable expectation that discovery will reveal evidence” of the alleged  
19 misconduct. *Twombly*, 550 U.S. at 556. Thus, “a district court weighing a motion to dismiss asks ‘not  
20 whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to  
21 support the claims.’” *Id.* at 563 n.8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

24 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court  
25 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129  
26

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27  
28 <sup>18</sup> See Complaint ¶ 8.

<sup>19</sup> See Exhibit G, Secretary of State Records.

1 S.Ct. at 1949 (emphasis added). “Determining whether a complaint states a plausible claim for relief  
 2 will . . . be a context-specific task that requires the reviewing court to draw on its judicial  
 3 experience and common sense.” *Id.* at 1950.

4 Even if a plaintiff’s allegations are insufficient by themselves, courts will still deny a motion  
 5 to dismiss under Fed. R. Civ. P. 12(b)(6) so long as the allegations in addition to inferences drawn  
 6 from those allegations, provide a basis for recovery. *Menkowitz v. Pottstown Mem’l Med. Ctr.*, 154  
 7 F.3d 113, 124-125 (3d Cir. 1998).

8 As this Court recognizes, “[t]he defendant has the burden of demonstrating that venue is  
 9 improper.” *Thomas Glob.*, 2016 WL 706194, at \*3; *see also Myers v. Am. Dental Ass’n*, 695 F.2d  
 10 716, 724 (3d Cir. 1982) (“It logically follows therefore that on a motion for dismissal for improper  
 11 venue under Rule 12 the movant has the burden of proving the affirmative defense asserted by it.”);  
 12 *St. Clair Intellectual Prop. Consultants, Inc. v. Mirage Sys., Inc.*, 419 F. Supp. 2d 620, 623 (D. Del.  
 13 Mar. 8, 2006) (“The moving party bears the burden of proving venue is improper.”). It is also  
 14 axiomatic that, in deciding a motion to dismiss/transfer for improper venue, the court “draws all  
 15 reasonable inferences and resolves all factual conflicts in the plaintiff’s favor.” *Thomas Glob.*, 2016  
 16 WL 706194, at \*3 (citing *Bockman v. First Am. Mktg. Corp.*, 459 F. App’x 157, 158 n.1 (3d Cir.  
 17 2012)).

### 20 **III. ARGUMENT AND AUTHORITIES**

21 Defendant’s Motion to Dismiss for Failure to State a Claim is nothing more than a veiled  
 22 attempt at a summary judgment motion which is improper at this juncture. Furthermore, Defendant’s  
 23 Motion to Dismiss for Improper Venue is similarly meritless. Defendant’s Motion must therefore be  
 24 denied.

#### 25 **A. THE COMPLAINT STATES CLAIMS FOR NEGLIGENCE AGAINST PBF 26 ENERGY, INC. THAT ARE PLAUSIBLE ON THEIR FACE**



1 In deciding Rule 12(b)(6) motions, the court is required to “accept all factual allegations as  
 2 true and construe the complaint in the light most favorable to the plaintiff.” *Phillips v. County of*  
 3 *Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008)(citations omitted). The court must also “assume that all  
 4 general allegations embrace whatever specific facts might be necessary to support them.” *Pelozo v.*  
 5 *Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994).  
 6

7 Further, Defendant’s motion *itself* belies the fact that it is already fully aware of the nature of  
 8 the claims against it, both from the facts alleged in the complaint and as a result of Defendant’s years  
 9 of experience in workplace injury litigation.

10 **The complaint states claims for negligence against PBF Energy, Inc. that are plausible**  
 11 **on their face, which is all Plaintiff is required to do at this point in the pleadings stage.** Fed. R.  
 12 Civ. P. 8(a)(2). Defendants state that Rule 8 “demands” more than this. It does not. Further, what  
 13 Rule 8 certainly does not demand is that Plaintiff proves his case at the pleadings stage. Nowhere in  
 14 Rule 8 does it state that Plaintiff has to provide support for its facts nor does Rule 8 include the word  
 15 “demand” despite Defendant’s melodramatic reinterpretation of the rules. Defendant attempts to  
 16 create a rule that simply does not exist in order to better tailor to its arguments. Furthermore, Rule 8  
 17 is liberal in its construction in that it states that “a party may state as many separate claims or defenses  
 18 as it has, *regardless of consistency*.” *Id.* at (d)(3).  
 19

20 Here, Plaintiff’s factual allegations are not labels and conclusions, nor are they legal  
 21 conclusions couched as factual allegations. Plaintiff’s Complaint is more than just “Defendants  
 22 negligently caused plaintiff’s harm”, or “Defendants had a duty to plaintiff, which they breached, and  
 23 that breach caused plaintiff’s harm.” It contains all necessary elements to state a cause of action  
 24 against defendants for negligence. Defendant confuses pleading requirements with evidentiary  
 25 requirements and attempts to confuse this Court of the same.  
 26  
 27  
 28

1 Plaintiff stated in his complaint that Defendant, PBF, as owner of the Premises, was  
 2 responsible for the scheduling and coordinating of the work, including the subject lift that injured  
 3 Plaintiff. Plaintiff also alleged that PBF's executive decisions, including capital expenditures and  
 4 work force reductions, substantially contributed to the incident made the basis of this lawsuit because  
 5 the reduced workforce did not provide a sufficient number of workers to do the lift that injured  
 6 Plaintiff. Therefore, in that vein, Plaintiff's Complaint contains factual allegations that PBF Energy  
 7 controlled Toledo Refining Company's activities, either in general or with respect to the Turnaround  
 8 Project purportedly giving rise to Plaintiff's allegations.

10 Regardless, Plaintiff is not required to provide evidence at this point. That is what discovery  
 11 is for. *Twombly*, 550 U.S. at 556. Discovery will reveal more facts and more information during the  
 12 later stages of the litigation process, at which time Defendant PBF can file a motion for summary  
 13 judgment if it so chooses. *Id.* However, for now, what Plaintiff has pled in the Complaint is sufficient  
 14 pursuant to the rules and prevailing case law.

16 It should be clear for the record that Plaintiff did not sue Toledo Refining Company LLC.  
 17 Plaintiff has brought suit against its parent because PBF Energy, Inc. is the proper party according to  
 18 Plaintiff's allegations. Should the evidence reveal otherwise, Plaintiff has still properly pled a claim  
 19 against PBF and dismissal is inappropriate at this juncture.

21 For the reasons set forth above, Defendant's Motion to Dismiss is meritless and must be  
 22 denied.

23 **B. DEFENDANT HAS NOT MET ITS BURDEN OF DEMONSTRATING**  
 24 **IMPROPER VENUE.**

25 Defendant has not met its burden of demonstrating improper venue. Where, as here,  
 26 jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332, venue is proper in

27 (1) a judicial district where any defendant resides, if all defendants reside in the same State,  
 28 (2) a judicial district in which a substantial part of the events or omissions giving rise to the  
 claim occurred, *or* a substantial part of property that is the subject of the action is situated, *or*

(3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b) (emphasis added).

“A plaintiff need satisfy *only one of the three* [subsections of § 1391(a)] in order for venue to be proper” (emphasis added). *See, e.g., Superior Precast, Inc. v. Safeco Ins. Co. of Am.*, 71 F. Supp. 2d 438, 443 (E.D. Pa. 1999)

**1. The events or omissions giving rise to the claim occurred in New Jersey.**

Defendant has failed to show that venue is improper under subsection (2) which states that a “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”.<sup>20</sup> As PBF’s Chief Executive Officer Thomas Nimbley said after PBF’s acquisition of Sunoco’s Toledo, Ohio Refinery that “PBF plans to retain substantially the same workforce at the refinery.”<sup>21</sup> Toledo has talented and experienced employees and **PBF looks forward to working with them following completion of the acquisition**.<sup>22</sup> Thomas D. O’Malley, PBF’s Chairman, said “The Toledo acquisition provides PBF with growth in a different geographic area.”<sup>23</sup> Therefore this idea that PBF somehow played no role in the Turnaround Project at the Toledo refinery is a fantasy. Defendant PBF was responsible for issuing work permits and ensuring the work conducted inside of the plant was being done safely.<sup>24</sup> Importantly, Defendant PBF reduced a significant amount of the work force at the plant.<sup>25</sup> This reduction left an insufficient number of workers to perform the job tasks safely.<sup>26</sup> Defendant PBF Energy and/or its agents were negligent in performing and/or failing to perform such actions and/or such omissions so as to render the Premises unsafe for Plaintiff

<sup>20</sup> Plaintiff incorporates herein by reference all the information stated in Section I, Factual Background.

<sup>21</sup> *See* Exhibit H, *PBF to Acquire Sunoco’s Toledo Ohio Refinery*, Business Wire (December 2, 2010), <https://www.firstreserve.com/news-articles/pbf-to-acquire-sunocos-toledo-ohio-refinery>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See* Complaint ¶ 2.

<sup>25</sup> *See* Exhibits E and F.

<sup>26</sup> *Id.*

1 Thomas H. Pillsbury.<sup>27</sup> As a direct and proximate result of PBF Energy, Inc.'s unreasonable conduct,  
 2 Plaintiff suffered serious injury.<sup>28</sup> If this Court chooses to look past this Complaint for more factual  
 3 allegations regarding reduced workforce, it need not look far. Several news outlets too have reported  
 4 that PBF Energy Inc. made drastic and significant cutbacks to its work force at the Toledo plant in  
 5 April 2020 and previously.<sup>29</sup> According to one source, PBF Energy, Inc. said it was "operating its  
 6 refineries at minimum rates, with throughput about 30% lower than the refiner's expectations..."<sup>30</sup>.

8 PBF is *headquartered* in New Jersey. PBF maintains its principal place of business at 1 Sylvan  
 9 Way, 2nd Floor, Parsippany, NJ, 07054. The Secretary of State filings and PBF's own website show  
 10 this to be true.<sup>31</sup> Not surprisingly, Defendant intentionally omits this glaring and obvious fact from  
 11 its Motion. The fact that Defendant is headquartered in New Jersey is relevant to demonstrating that  
 12 a substantial part of the events giving rise to the claim occurred in New Jersey. The dominoes that led  
 13 to the incident commenced in **New Jersey**. PBF Energy made a decision to make a reduction in force  
 14 which would come from the executive level at PBF headquarters in **New Jersey**. But for PBF making  
 15 a reduction in force, this incident would not have happened. Notably subsection (2) can be satisfied  
 16 by demonstrating that venue is in the judicial district where a substantial part of *omissions* giving rise  
 17 to the claim occurred. PBF Energy, Inc. had significant omissions that led to this incident including  
 18 failing to ensure the work done inside the plant was done safely. At the core of this case are  
 19 Defendant's acts and failures in ensuring it provided a work environment that was safe. **This**  
 20 **emanates from New Jersey**. Records related to agreements between PBF Energy, Inc. and other  
 21 Defendants would be at Defendant PBF Energy's headquarters here in **New Jersey**. Defendant's  
 22 managers, and employees involved in the key decision-making process for the job to be conducted at  
 23  
 24  
 25

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26 <sup>27</sup> See Complaint ¶ 7.

27 <sup>28</sup> *Id.*

28 <sup>29</sup> See Exhibit E.

<sup>30</sup> See Exhibit F.

<sup>31</sup> See Exhibit I, PBF Energy Website, Contact Us. See Exhibit G.

1 the plant are in **New Jersey**. This also means that a significant number of witnesses reside in and will  
 2 be deposed/presented in New Jersey. Despite maintaining the headquarters for a majority of its  
 3 operations in this state, Defendant attempts to convince this Court that maintaining this lawsuit in  
 4 New Jersey would be improper for Defendant. The facts clearly belie Defendant's arguments.

5  
 6 Defendant attempts to support its arguments for improper venue by way of an affidavit from  
 7 Marc Halley, Maintenance Manager of Toledo Refining Company LLC, attached to its Motion as  
 8 Exhibit A. This affidavit does little if anything to save Defendant's argument. The contract may very  
 9 well have been negotiated in Ohio – although Plaintiff disputes this claim -- but the contract was most  
 10 likely drafted, executed and signed in New Jersey, if previous contracts between Toledo Refining  
 11 Company and other entities are any indication. For example, the Asset Sale and Purchase Agreement  
 12 in December 2, 2010 between Toledo Refining Company LLC and Sunoco, Inc., for the plant made  
 13 the basis of this lawsuit was signed by Jeffrey Dill, Secretary and Senior Vice President of PBF  
 14 Energy<sup>32</sup>, who was located in New Jersey.

15  
 16 Second, the affidavit states that the contract between TRC and Jeffers Crane Service contains  
 17 a provision stating it will be governed by the law of Ohio and Ohio has jurisdiction over the contract,  
 18 as if this fact alone should be dispositive. This “forum selection clause” may at the most be controlling  
 19 for say, a breach of contract dispute between TRC and Jeffers Crane Service. **However, Plaintiff was**  
 20 **not a party to this contract.** Plaintiff was not the intended beneficiary of this contract. **Plaintiff did**  
 21 **not consent to Ohio as the forum for his *tort* claims.** This lawsuit involves a tort action. Therefore,  
 22 this fact should hold no weight in the venue analysis for this lawsuit.

23  
 24 Furthermore, case law has been clear that so-called “forum selection clauses” are not  
 25 dispositive for venue purposes. A valid forum selection clause requiring the parties to litigate in the  
 26

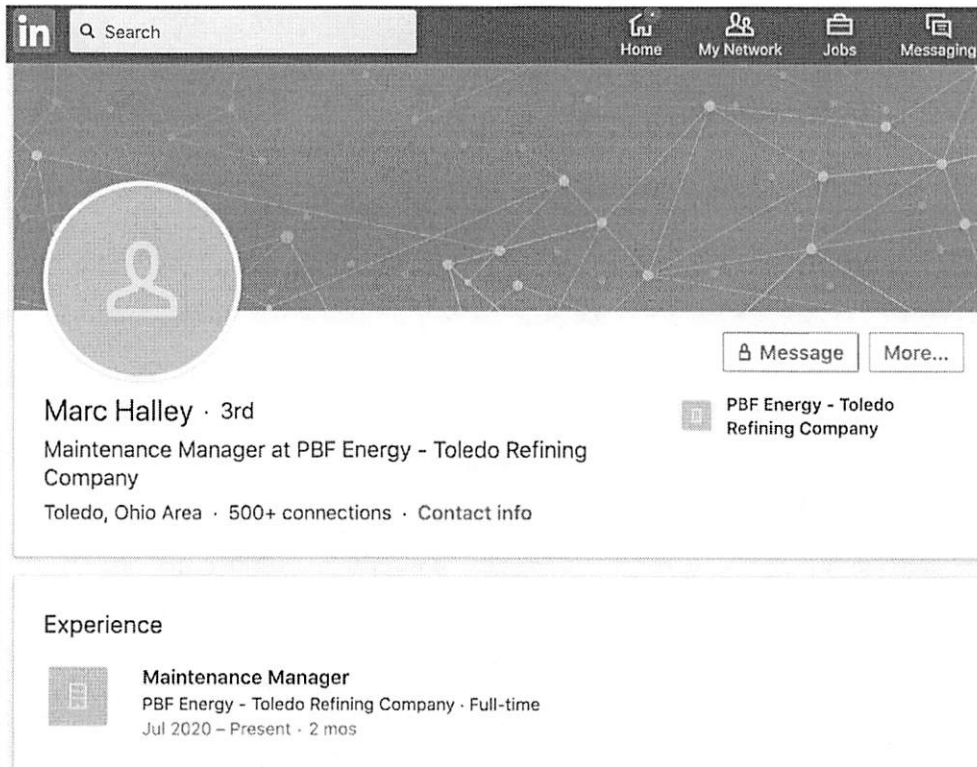
27  
 28 <sup>32</sup> See Exhibit J, Asset Sale and Purchase Agreement. See Exhibit K, LinkedIn Page of Jeffrey Dill.

1 state or federal courts of a particular state does not render venue “improper” in a non-contractual  
2 forum, provided that venue is otherwise proper in such forum. *Jumara v. State Farm Ins. Co.*, 55 F.3d  
3 at 877-79 (holding that because federal venue statute was satisfied in non-contractual forum, the  
4 district court erred in dismissing a case pursuant 28 U.S.C. § 1406 for improper venue when plaintiff  
5 filed an action in non-contractual forum); *Albert v. Butterfield & Robinson*, No. 01-CV-1724, 2001  
6 WL 1175147, at \*2 (citing *Jumara* and stating that “since venue is proper in this district, the court  
7 cannot dismiss this matter for improper venue”).

8  
9 Interestingly, on Marc Halley’s LinkedIn Page, he states that he is **Maintenance Manager at**  
10 **PBF Energy – Toledo Refining Company**.<sup>33</sup> The maintenance manager for the entire facility at  
11 dispute works for PBF Energy. This evidence only reinforces the fact that PBF is the actual entity  
12 that runs and operates the Toledo refinery, despite the separate entity. In Mr. Halley’s affidavit and  
13 under his signature page, he claims that he is employed by Toledo Refining Company when in fact  
14 his LinkedIn page states that he works *for PBF Energy*. This is a very important fact that is  
15 conveniently missing from Mr. Halley’s declaration that he signed **under penalty of perjury**. He  
16 contradicts himself in his affidavit. This evidence substantiates and bolsters Plaintiff’s claim.  
17  
18  
19  
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21  
22  
23  
24  
25  
26  
27

28 <sup>33</sup> See Exhibit L, Marc Halley LinkedIn Profile.





15 PBF Energy is trying to distance itself from Toledo Refining Company LLC although it is very much  
 16 involved in the day to day dealings of TRC.<sup>34</sup>

17 Under subsection (2), venue is proper in New Jersey and Defendant's Motion to Dismiss for  
 18 Improper Venue must be denied.

19

20 **2. Plaintiff should be allowed to conduct limited venue discovery.**

21 Finally, if the Court decides that the factors set forth above are not sufficient for adjudicating  
 22 that venue is proper for PBF Energy, then Plaintiff respectfully requests that the Court permit Plaintiff  
 23 to conduct venue discovery to determine whether PBF Energy or its affiliates satisfies any of the  
 24 criteria enumerated in 28 U.S.C. § 1391. Furthermore discovery is necessary to afford Plaintiff a full  
 25 and fair opportunity to determine whether the factual allegations set forth in the Declaration of Marc  
 26

27

28 <sup>34</sup> See Exhibit B; See Exhibit D.

1 Halley attached to Defendant's Motion are true. There is no documentation appended to the  
 2 Declaration to support any of the allegations therein, and on its face, the Declaration raises more  
 3 questions than it answers. **The Supreme Court has held that "where issues arise as to jurisdiction**  
 4 **or venue, discovery is available to ascertain the facts bearing on such issues."** *Oppenheimer Fund,*  
 5 *Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978) (emphasis added).  
 6

7 **C. DEFENDANT HAS FAILED TO DEMONSTRATE THAT A TRANSFER TO**  
 8 **NORTHERN DISTRICT OF OHIO IS APPROPRIATE**

9 As an alternative to dismissal, PBF Energy argues that this Court transfer this case to the  
 10 Northern District of Ohio under 28 U.S.C. § 1406(a), which states that "[t]he district court of a district  
 11 in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the  
 12 interest of justice, transfer such case to any district or division in which it could have been brought."

13 For the reasons discussed, supra, in Part B of this Response, venue *is* proper in New Jersey  
 14 and, as a result, § 1406(a) does not apply here. *Jumara*, 55 F.3d at 878.

15 Even so, as with the defense of improper venue, the burden of establishing the need for transfer  
 16 rests squarely with Defendant PBF Energy, the movant. Moreover, the Third Circuit has clearly stated  
 17 that transfers should not be liberally granted. See *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879  
 18 (3d Cir.1995); *Plum Tree, Inc v. Stockment*, 488 F.2d 754, 757 n.2 (3d Cir. 1973).  
 19

20 "A plaintiff is not obligated to file an action in the most convenient forum, only in a proper  
 21 forum." 17-111 Moore's Fed. Prac-Civil 110.01[4][a] (2005). Furthermore, the plaintiff's choice of  
 22 forum is afforded great deference in the Third Circuit. **"First, it is well-established that a plaintiff's**  
 23 **choice of forum is 'a paramount consideration in any determination of a transfer request.'**  
 24 *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 26 (3d Cir. 1970). See also *Shore Slurry Seal, Inc. v. CMI*  
 25 *Corp.*, 964 F. Supp. 152, 156 (D.N.J. 1997) (stating choice of proper forum by plaintiff is "paramount  
 26 consideration" in transfer analysis); *Newcomb v. Daniels, Saltz, Mongeluzzi & Barrett, Ltd.*, 847 F.  
 27 Supp. 1244, 1246 (D.N.J. 1994) (stating choice of forum by plaintiff is accorded "significant weight")  
 28



1 Accordingly, “[u]nless the balance is strongly tipped in favor of the defendant, the plaintiff’s choice  
 2 of forum should not be disturbed.” *Hoffer v. Infospace.com, Inc.*, 102 F. Supp. 2d 556, 573 (D.N.J.  
 3 2000).

4 Plaintiff respectfully asks this Court to deny Defendant’s Motion to Transfer this case to  
 5 Northern District of Ohio for the reasons set forth above. New Jersey is proper venue because all or  
 6 substantially all of the acts giving rise to the claim occurred in New Jersey. In the interests of justice,  
 7 this Court cannot transfer this case lest Plaintiff’s claim and remedy at law be extinguished.  
 8

#### 9 **D. PLAINTIFF SHOULD BE GIVEN LEAVE TO AMEND THE COMPLAINT**

10 Although Plaintiff is confident that the counts Defendant claims should be dismissed state a  
 11 valid claim under the applicable law, if this Court should dismiss any of the claims, Plaintiff would  
 12 respectfully ask that he be given leave to amend and re-plead any of them. Leave is particularly  
 13 appropriate as the crux of most of Defendant’s arguments center around deficiencies in pleading  
 14 sufficient facts in support of certain claims. Generally, leave to amend under Federal Rule of Civil  
 15 Procedure 15(a) is given freely. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Saewitz v. Lexington Ins.*  
 16 *Co.*, 133 F. App’x 695, 699 (11th 8 Cir. 2005) (per curiam).  
 17

#### 18 **CONCLUSION AND PRAYER**

19 For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant PBF  
 20 Energy, Inc.’s Motion to Dismiss for Failure to State a Claim and for Improper Venue as Defendant’s  
 21 Motion is improper and without merit. Alternatively, Plaintiff respectfully asks that he be given leave  
 22 by this Court to re-plead any of their claims as allowed by the Rules and pursuant to applicable case  
 23 law. Plaintiff further prays for any other relief to which he may show himself justly entitled.  
 24  
 25  
 26  
 27  
 28

Respectfully submitted,

THE BUZBEE LAW FIRM

/s/ Cornelia Brandfield-Harvey

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*Attorneys for Plaintiffs Thomas H.*

*Pillsbury Jr. and Melody Pillsbury*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via ECF by August 25, 2020, upon the following:

Riccardo M. DeBari  
THOMPSON HINE LLP  
335 Madison Avenue  
12th Floor  
New York, New York 10017

*Attorney for Defendant PBF Energy, Inc.*

/s/ Kevin Kutyla

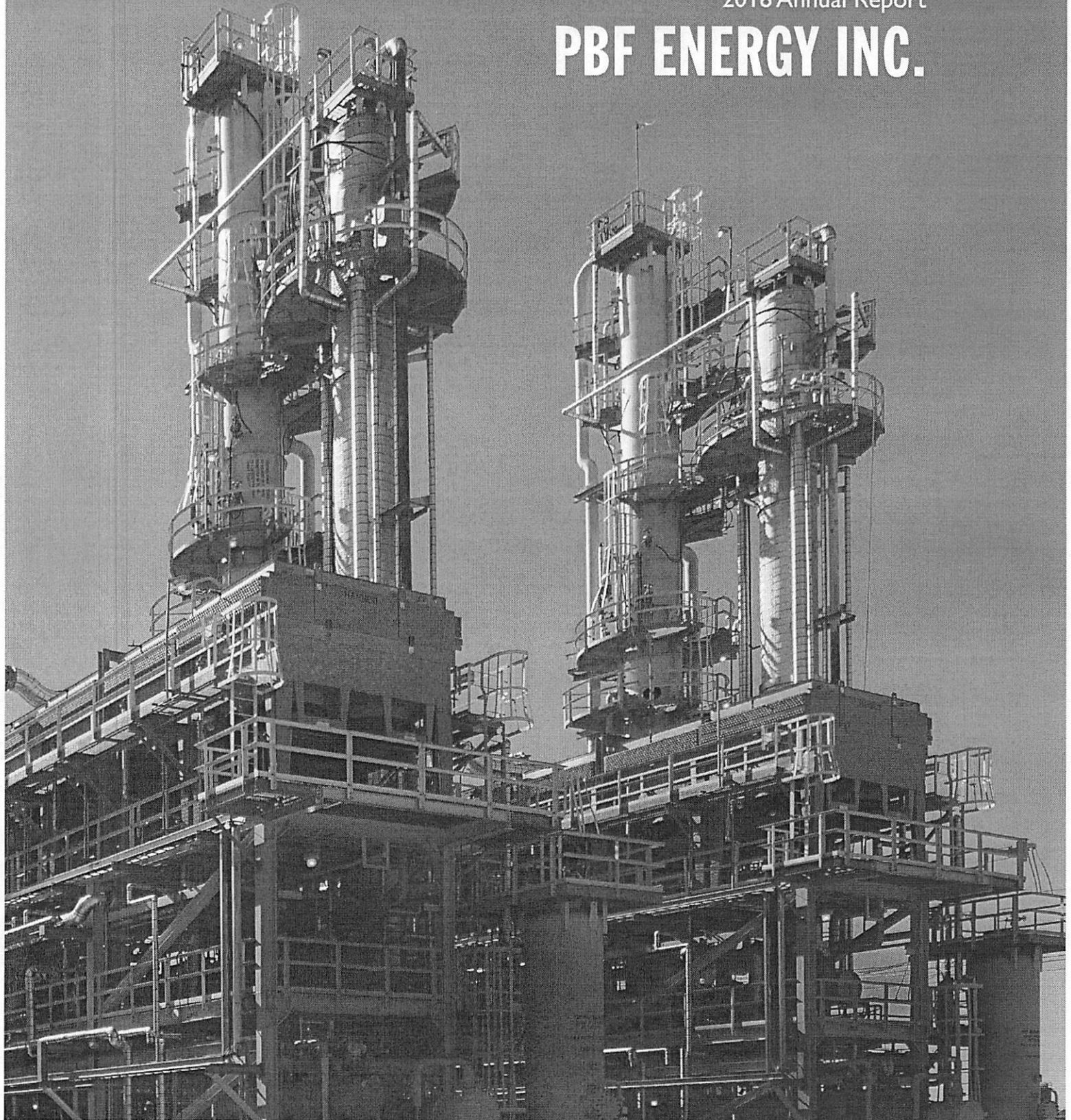
Kevin Kutyla





2018 Annual Report

# PBF ENERGY INC.





# To Our Shareholders,

In 2018, PBF Energy celebrated its 10th anniversary, including six years as a public company. From humble beginnings in a single office, with no assets and under a dozen employees, we have enjoyed tremendous growth to our current size of approximately 3500 employees, five refineries and numerous terminals, pipelines and other assets that facilitate our operations across the United States. PBF Energy's core principles exist in the safe, reliable and environmentally responsible operations of our assets, the production of the cleanest fuels possible and that everyone in our company plays a critical role in PBF's success.

We believe our responsibility to our employees, neighbors, shareholders and the environment is only fulfilled through our commitment to safety and reliability. Starting with rigorous training, sharing of expertise across our sites, continuous monitoring and through promoting a culture of excellence in operations we keep our people, the communities in which we operate and the environment safe.

In 2018, we invested over \$550 million in turnaround, maintenance and other strategic capital expenditures to improve reliability, reduce environmental impacts and extend the utility of our assets. We completed major turnarounds at our Chalmette, Toledo, Paulsboro and Delaware City refineries.

**“We believe our responsibility to our employees, neighbors, shareholders and the environment is only fulfilled through our commitment to safety and reliability.”**

—Tom Nimbley, Chairman and Chief Executive Officer

We processed more than 849,000 barrels per day of crude oil and other inputs, and produced almost 855,000 barrels per day of finished products. Over 85 percent of the 310 million barrels of products we produced were high-value distillates, gasoline, lube oils and specialty chemicals, which in total generated \$838 million of cash from operations.

In 2018, excluding special items, PBF generated EBITDA of approximately \$1.1 billion and operating income of \$718 million for the year, resulting in adjusted fully-converted net income of \$3.26 per share, on a fully-exchanged and fully-diluted basis. On a consolidated basis, we invested over \$734 million in the business through turnarounds, capital expenditures and acquisitions at the PBF Logistics level. On a consolidated basis, we finished 2018 with a year-end cash balance of \$597 million, total liquidity of approximately \$1.9 billion and a net debt to capitalization ratio of 27 percent, excluding special items.

PBF Energy continued rewarding our shareholders in 2018 with a regular annual dividend, paid quarterly, of \$1.20 per share. In 2018, PBF paid out \$139 million in four separate non-tax distributions. This represents a payout of approximately 36 percent of adjusted fully-converted net income excluding special items in 2018.

Our partner, PBF Logistics (or the “Partnership”), continued delivering strong financial results and distribution growth to its unit holders. Early in 2018, the Partnership announced a multi-year organic growth plan that is expected to increase Partnership EBITDA by over 65 percent on an annualized basis once complete and in service. In addition to the organic growth pipeline, the Partnership continued focusing on accretive strategic acquisitions in 2018. PBF Logistics completed two third-party acquisitions including that of the East Coast Storage Assets from Crown Point International, LLC. The East Coast Storage Assets include a storage facility

with approximately four million barrels of multi-use storage capacity (of which over 50 percent is heated storage), an Aframax-capable marine facility, a rail facility, a truck terminal, equipment, contracts and other assets. With close proximity to the Paulsboro refinery, we expect there will be synergy opportunities between PBF Logistics and PBF Energy. Since the time of its initial public offering, PBF Logistics has supported a compound annual distribution growth rate of approximately 12 percent through the end of 2018, with a current annualized distribution of \$2.02 per unit.

Subsequent to year-end, in February of 2019, PBF Energy and PBF Logistics eliminated the incentive distribution rights held by PBF Energy in exchange for the issuance of 10,000,000 common units. As a result of this transaction PBF Energy currently owns approximately 54 percent of PBF Logistics and 100 percent of the general partner. This transaction simplifies our corporate structure and more closely aligns us with our logistics partner. PBF Energy has demonstrated its continuing support for, and commitment to, PBF Logistics and we value our relationship as a necessary component to the continued growth of both companies.

Executing our foundational growth strategy has helped us build a company that is capable and poised for future

success. We believe that opportunities to expand our business through meaningful asset or corporate acquisitions exist and part of our job is to put our company, and our balance sheet, in a position to execute when those opportunities present themselves.

As we look forward in 2019, we have our sights set on safe, reliable operations, and putting our pure-play refining company in a position to succeed and grow. We believe that global demand for petroleum products will continue to increase and support a strong refining environment. We are also edging closer to implementation of the International Maritime Organization's regulations that will reduce allowable sulfur levels in fuels being used in the shipping industry. Scheduled to become effective in January of 2020, these regulations could potentially drive wider light – heavy spreads for feedstocks with higher sulfur content and also increase demand for low-sulfur

distillates. This could potentially be a double benefit for refiners capable of processing high-sulfur inputs to produce high-quality, low-sulfur, high-value fuels. PBF Energy, with its high-complexity refining system, is well positioned to benefit and we are actively increasing our advantage by investing in strategic, high-return projects at our Chalmette and Delaware City refineries that will come online in the next twelve months.

Before closing, we would like to thank our Board of Directors, present and past, for their continuing stewardship and guidance. Additionally, we would like to thank all of PBF's employees for their dedication and commitment; they are the foundation of our company and responsible for any successes PBF Energy enjoys.

Finally, we thank our shareholders for your continuing support. We are working diligently to reward the trust you have placed in us.

Sincerely,



Tom Nimbley  
Chairman and  
Chief Executive Officer

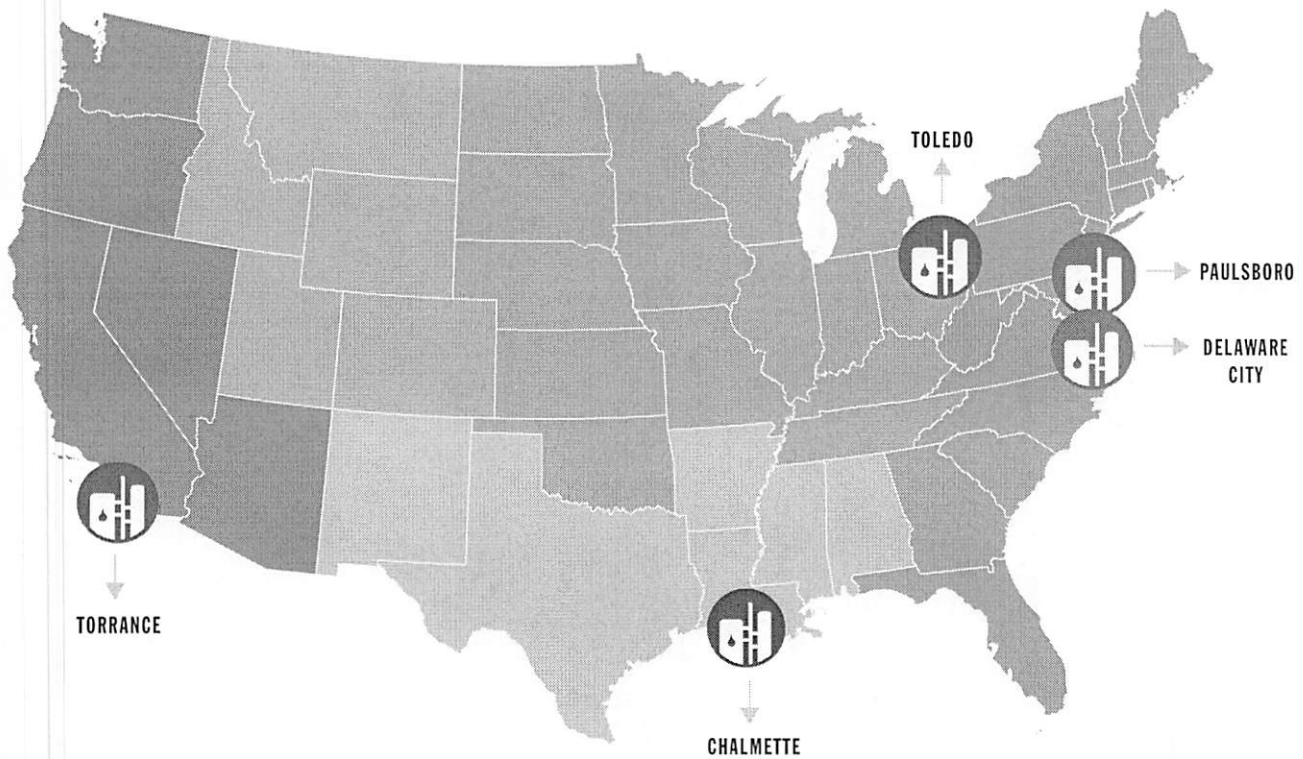


PAGE 4

# Our Refineries

The figures below are based off of our 2018 operations:

<b>TORRANCE REFINERY</b>  Processes <b>88%</b> heavy and medium crude oils	<b>CHALMETTE REFINERY</b>  Exported over <b>22%</b> of its total production	<b>TOLEDO REFINERY</b>  Yields <b>92%</b> high-value products including gasoline, distillate and chemicals	<b>DELAWARE CITY REFINERY</b>  <b>64%</b> of East Coast coking capacity	<b>PAULSBORO REFINERY</b>  <b>36%</b> of East Coast coking capacity
--	---	--	--	--



**PADD 1**      **PADD 2**      **PADD 3**      **PADD 4**      **PADD 5**



PBF ENERGY INC. AND PBF ENERGY COMPANY LLC  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(IN THOUSANDS, EXCEPT SHARE, UNIT, PER SHARE, PER UNIT AND BARREL DATA)

## 1. DESCRIPTION OF THE BUSINESS AND BASIS OF PRESENTATION

### Description of the Business

PBF Energy Inc. ("PBF Energy") was formed as a Delaware corporation on November 7, 2011 and is the sole managing member of PBF Energy Company LLC ("PBF LLC"), a Delaware limited liability company, with a controlling interest in PBF LLC and its subsidiaries. PBF Energy consolidates the financial results of PBF LLC and its subsidiaries and records a noncontrolling interest in its consolidated financial statements representing the economic interests of PBF LLC's members other than PBF Energy (refer to "Note 15 - Noncontrolling Interests").

PBF Energy holds a 99.0% economic interest in PBF LLC as of December 31, 2018 through its ownership of PBF LLC Series C Units, which are held solely by PBF Energy. Holders of PBF LLC Series A Units, which are held by parties other than PBF Energy ("the members of PBF LLC other than PBF Energy"), hold the remaining 1.0% economic interest in PBF LLC. The PBF LLC Series C Units rank on parity with the PBF LLC Series A Units as to distribution rights, voting rights and rights upon liquidation, winding up or dissolution. In addition, the amended and restated limited liability company agreement of PBF LLC provides that any PBF LLC Series A Units acquired by PBF Energy will automatically be reclassified as PBF LLC Series C Units in connection with such acquisition.

PBF LLC, together with its consolidated subsidiaries, owns and operates oil refineries and related facilities in North America. PBF Holding Company LLC ("PBF Holding") is a wholly-owned subsidiary of PBF LLC. PBF Investments LLC ("PBF Investments"), Toledo Refining Company LLC ("Toledo Refining" or "TRC"), Paulsboro Refining Company LLC ("Paulsboro Refining" or "PRC"), Delaware City Refining Company LLC ("Delaware City Refining" or "DCR"), Chalmette Refining, L.L.C. ("Chalmette Refining"), PBF Western Region LLC ("PBF Western Region"), Torrance Refining Company LLC ("Torrance Refining") and Torrance Logistics Company LLC are PBF LLC's principal operating subsidiaries and are all wholly-owned subsidiaries of PBF Holding. Discussions or areas of the Notes to Consolidated Financial Statements that either apply only to PBF Energy or PBF LLC are clearly noted in such footnotes.

At December 31, 2018, PBF LLC also held a 44.0% limited partner interest and all of the incentive distribution rights in PBF Logistics LP ("PBFX"), a publicly-traded master limited partnership ("MLP") (refer to "Note 3 - PBF Logistics LP"). PBF Logistics GP LLC ("PBF GP") owns the noneconomic general partner interest and serves as the general partner of PBFX and is wholly-owned by PBF LLC. PBF Energy, through its ownership of PBF LLC, consolidates the financial results of PBFX and its subsidiaries and records a noncontrolling interest in its consolidated financial statements representing the economic interests of PBFX's unitholders other than PBF LLC (refer to "Note 15 - Noncontrolling Interests"). Collectively, PBF Energy and its consolidated subsidiaries, including PBF LLC, PBF Holding, PBF GP and PBFX are referred to hereinafter as the "Company" unless the context otherwise requires.

Substantially all of the Company's operations are in the United States. The Company operates in two reportable business segments: Refining and Logistics. The Company's oil refineries are all engaged in the refining of crude oil and other feedstocks into petroleum products, and are aggregated into the Refining segment. PBFX is a publicly-traded MLP that was formed to operate logistical assets such as crude oil and refined petroleum products terminals, pipelines and storage facilities. The Logistics segment consists solely of PBFX's operations. To generate earnings and cash flows from operations, the Company is primarily dependent upon processing crude oil and selling refined petroleum products at margins sufficient to cover fixed and variable costs and other expenses. Crude oil and refined petroleum products are commodities; and factors that are largely out of the Company's control can cause prices to vary over time. The resulting potential margin volatility can have a material effect on the Company's financial position, earnings and cash flow.

### Public Offerings

In connection with certain of the secondary offerings completed in 2015, 2014 and 2013, investment funds associated with the initial investors in PBF LLC exchanged all of their PBF LLC Series A Units for an equal number of shares of PBF Energy Class A common stock which were subsequently sold to the public and, accordingly, no



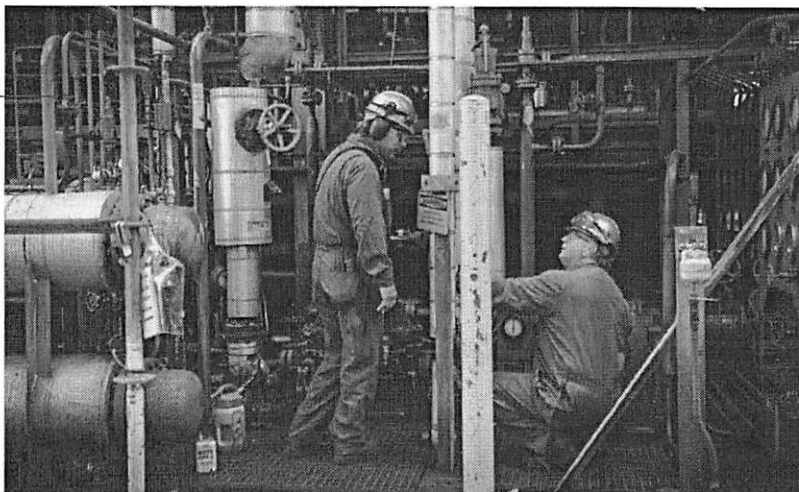
## Refineries

PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States.

### Delaware City, DE

The Delaware City refinery has a throughput capacity of 190,000 bpd and a Nelson complexity rating of 11.3. As a result of its configuration and petroleum refinery processing units, Delaware City has the capability to process a diverse heavy slate of crudes with a high concentration of high sulfur crudes making it one of the largest and most complex refineries on the East Coast.

The refinery is located on a 5,000-acre site on the Delaware River, with the ability to accept crude by rail or waterborne cargoes. It possesses an extensive distribution network of pipelines, barges and tankers, truck and rail for the distribution of its refined products.



### Delaware City Quick Facts

190,000bpd  
Production

11.3 Nelson  
Complexity

5,000 acre  
Facility

### Paulsboro, NJ

The Paulsboro refinery has a throughput capacity of 180,000 bpd and a Nelson complexity rating of 13.2. It is located on approximately 950 acres on the Delaware River in Paulsboro, New Jersey, just south of



8/25/2020

Refineries - PBF Energy



Philadelphia and approximately 30 miles North of the Delaware City refinery.

The Paulsboro refinery processes a variety of medium and heavy sour crude oils and predominantly produces gasoline, heating oil and aviation jet fuel. The refinery also manufactures Group I lubricant base oils. In addition to its finished clean products slate, Paulsboro produces asphalt and petroleum coke.

## Paulsboro Quick Facts

180,000bpd  
Production

13.2 Nelson  
Complexity

950 acre  
Facility

## Toledo, OH

The Toledo refinery has a throughput capacity of approximately 170,000 bpd and a Nelson complexity rating of 9.2. Toledo processes a slate of light, sweet crudes from Canada, the Mid-continent, the Bakken region and the U.S. Gulf Coast. Toledo produces a high volume of finished products including gasoline and ultra-low sulfur diesel, in addition to a variety of high-value petrochemicals including nonene, xylene, tetramer and toluene.

The Toledo petroleum refinery is located on a 282-acre site near Toledo, Ohio, 60 miles south of Detroit. Major units at the Toledo refinery include an FCC unit, a hydrocracker, an alkylation unit and an UDEX unit. Crude is delivered to, and finished products are exported from, the Toledo refinery primarily through a network of pipelines.



## Toledo Quick Facts

170,000bpd  
Production

9.2 Nelson  
Complexity

282 acre  
Facility

8/25/2020

Refineries - PBF Energy



## New Orleans, LA

The Chalmette Refinery, located outside of New Orleans, Louisiana, is a 189,000 barrel per day, dual-train coking refinery with a Nelson Complexity of 12.7 and is capable of processing both light and heavy crude oil. The facility is strategically positioned on the Gulf Coast with strong logistics connectivity that offers flexible raw material sourcing and product distribution opportunities, including the potential to export products.

The Chalmette refinery processes a variety of crude oils and predominantly produces gasoline, distillates and specialty chemicals. The refinery distributes its products locally and exports to domestic and international markets through pipeline and maritime assets.

### Chalmette Quick Facts

189,000bpd  
Production

12.7 Nelson  
Complexity

Import &  
Export

## Torrance, CA

The Torrance refinery is located in Torrance, California, and processes a blend of primarily heavy and medium crudes to produce a high-value product slate. The Torrance refinery has a nameplate crude capacity of 155,000 barrels per day with a Nelson Complexity index of 14.9.

The Torrance refinery is located on a 700-acre site in Torrance, California. It receives its crude oil primarily through a direct pipeline connection to California central valley and also has access to waterborne feedstocks through the Ports of Los Angeles and Long Beach. The refinery produces approximately 1.8 billion gallons of gasoline per year, which represents approximately ten percent of the gasoline demand in California. In addition to blending three grades of gasoline, Torrance produces diesel fuel, jet fuel, liquefied petroleum gases (LPGs), coke and sulfur. The refinery ships products to customers via a series of proprietary pipelines and terminals throughout the region via truck, rail, barges, and ships.



### Torrance Quick Facts

155,000bpd  
Production

14.9 Nelson  
Complexity

700 acre  
Facility



8/25/2020

Refineries – PBF Energy



## Martinez, CA

The Martinez refinery is PBF Energy's most recent acquisition. The 157,000 barrel-per-day, dual-coking refinery is located on an 860-acre site in the City of Martinez, 30 miles northeast of San Francisco, California. The refinery is a high-conversion facility with a Nelson Complexity Index of 16.1, making it one of the most complex refineries in the United States. The facility is strategically positioned in Northern California and provides for operating and other synergies with PBF's Torrance refinery located in Southern California. In addition to refining assets, the transaction includes a number of high-quality onsite logistics assets including a deep-water marine facility, product distribution terminals and refinery crude and product storage facilities with approximately 8.8 million barrels of shell capacity.

## Martinez Quick Facts

157,000bpd  
Production

16.1 Nelson  
Complexity

860 acre  
Facility



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## CONTACT US

NYSE PBF: \$9.12 ▼

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**Mike Gudgeon** · 3rd

Refinery Manager at PBF Energy

Oregon, Ohio · 336 connections · Contact info

Message

More...



PBF Energy



University of Birmingham

## Experience



**PBF Energy**

9 yrs 8 mos

**Refinery Manager - Toledo Refinery**

Aug 2017 – Present · 3 yrs 1 mo

Toledo, Ohio Area





8/25/2020

Potential Line 5 closing has Toledo Refining Co., employees on edge | The Blade



MENU



## Potential Line 5 closing has Toledo Refining Co., employees on edge

PLAINTIFF'S  
EXHIBIT

D



TOM HENRY ✓

The Blade

thenry@theblade.com



JUN 18, 2019

5:15 PM

The 645-mile pipeline known as Line 5 has become one of North America's biggest environmental controversies because of what it could do to the Great Lakes if the metal ever bursts.

Line 5 runs across the Straits of Mackinac, the line between Lake Michigan and Lake Huron, and opponents worry a pipeline failure could jeopardize the health of the Great Lakes, the world's largest source of fresh water.

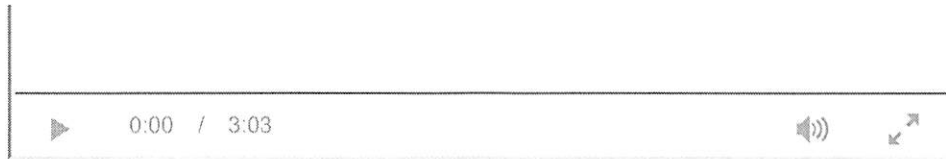


8/25/2020

Potential Line 5 closing has Toledo Refining Co., employees on edge | The Blade

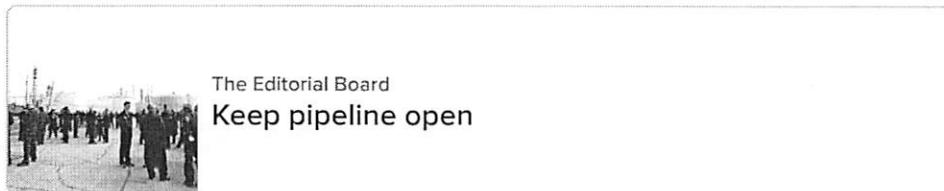


MENU



But 350 miles away from the straits, employees at the 122-year-old Toledo Refining Co. are eyeing the Line 5 controversy for a different reason: If the pipeline shuts down, officials at the East Toledo refinery worry an imminent closure of their operation could follow. That could mean the loss of 550 relatively high-paying jobs held by the men and women who work at the former Sunoco refinery.

That, according to refinery officials, would occur if the state of Michigan keeps Line 5 from delivering light sweet crude and natural gas for any length of time. The Toledo Refining plant has been heavily reliant on Line 5 for light sweet crude for most of the 66 years the pipeline has existed.



Brendan Williams, the chief policy adviser in Washington for PBF Energy, which owns the refinery, said nobody wants to compromise the Great Lakes, but Line 5 is a critical fuel supply, especially for Toledo Refining, which it says has no viable alternatives if the line is taken out of service. The refinery is not set up to off-load large shipments of crude transported by rail or truck, and the light sweet crude it gets from Line 5 could be contaminated if it is delivered by the next closest pipeline, Line 6B/78, because that one is mostly dedicated to heavy crude.

Line 6B/78 cuts from Sarnia in Ontario to Gary, Ind., running northwest of Detroit.

“There aren't any pipeline alternatives,” Mr. Williams said.





MENU

MIKE GUDGEON, PBF'S Toledo Refining manager, agreed.

"I think it's worth emphasizing: We just want to be part of the conversation," Mr. Gudgeon said. "This is a significant issue and we haven't been included. If Line 5 is shut down, it will jeopardize the continued operation of this facility."

The BP-Husky refinery in Oregon, the Marathon Oil refinery in Detroit, and other refineries would be affected as well.

A growing chorus of Toledo-area industry, union, and government sources are now amplifying those fears and their belief that a shutdown would drive up prices for flights out of Detroit Metro Airport and gasoline prices for motorists. The two Toledo-area refineries provide that airport with most of its jet fuel, followed by Marathon.



Asha Prihar

**Dana Inc. transfers retirement plan debt**

Those worried about the fate of Line 5 include Ohio Gov. Mike DeWine, who on Monday sent Michigan Gov. Gretchen Whitmer a letter pleading with her to not let it shut down permanently.

"Ohio has two refineries near the border that supply a significant percent of gasoline, diesel, and jet fuel to Ohio and southeast Michigan," Mr. DeWine's letter states. "In fact, our refineries supply the majority of aviation fuels to Detroit Metro Airport that cannot currently be replaced in any significant capacity without Line 5. As you know, losing Line 5 would also put more than 1,000 good-paying union jobs at risk in Ohio and Michigan. Our states have much at risk in terms of potential fuel price spikes, lost jobs, airline schedule disruptions and lost transportation project funding."

Similar letters were sent earlier this month by Toledo Mayor Wade Kapszukiewicz and Oregon Mayor Michael J. Seferian, as were

Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Northwest Ohio Building Trades, and the North America's Building Trades Unions.

Likewise, Ohio Lt. Gov. Jon Husted tried to calm Toledo Refining employees with a visit near the Woodville Road entrance on Tuesday, a stop designed to let them know the DeWine administration stands behind them.

In an interview with The Blade last week, four officials associated with PBF Energy used the word "crisis" to describe how tense the situation has become to them.

Governor Whitmer and Michigan Attorney General Dana Nessel — who both campaigned in support of shutting down Line 5 — have said they are days away from issuing the new administration's position on Line 5's fate.

The two Democrats both campaigned in favor of shutting it down, but Ms. Whitmer appears to be somewhat flexible if an agreement can be reached on expedited construction of a \$500 million tunnel that Line 5's Calgary-based owner, Enbridge, convinced former Michigan Gov. Rick Snyder, a Republican, was a workable compromise.

Ms. Whitmer's decision apparently depends on how fast Enbridge, one of America's largest pipeline companies, could build the tunnel and what more it could do in the interim to ensure safety. Enbridge originally told Mr. Snyder it envisioned a seven- to 10-year timetable; it later told Ms. Whitmer it could do it in five years or less. Now the company is in discussions with her about possibly trying to do the work in two years or less.

During a recent summit on Mackinac Island, Ms. Whitmer told reporters she is running out of patience and that the thought of all that fresh water being put at risk weighs on her mind daily.

Regardless what the governor decides, Ms. Nessel believes that as attorney general, she has the legal power to immediately shut



“Attorney General Nessel is properly focused on the very serious threat that the continued operation of Line 5 poses to the environment and the economy of all Great Lakes states and the province of Ontario,” Kelly Rossman-McKinney, a spokesman for Ms. Nessel, said in an email. “A spill from Line 5 would potentially impact the drinking water for tens of thousands of Michigan residents and would cause billions in damages to the environment and economy of the State, including lost tourism and recreation jobs, as well as lowering property values.”

Ms. Nessel’s office seemed unfazed by the claims made by Mr. DeWine, PBF, and others here about refinery jobs and lost gasoline and jet fuel from a shutdown.

“There is no independent information available that supports claims that shutting down Line 5 will cost thousands of jobs, cut off jet fuel supplies to Metro Airport, or significantly affect the availability and price of gasoline,” according to Ms. Rossman-McKinney’s email. “While Attorney General Nessel recognizes the concerns regarding the potential impacts of decommissioning Line 5, the bottom line is that the protection of the Great Lakes and the *entire* Great Lakes basin must be our highest priority.”

Enbridge spokesman Ryan Duffy said it will take two years alone just physically boring through Lake Michigan’s bedrock once engineering is completed and the tunnel is ready to be constructed. The tunnel-boring machine, which would start on the north side near St. Ignace, Mich., is expected to go no more than 40 feet a day, he said.

“We’re open to having more discussions. We’re committed to full transparency,” Mr. Duffy said. “We can’t agree to be shut down in two years. The current pipeline is safe.”

Enbridge has asked a Michigan court of claims for a ruling on whether the Whitmer administration or Ms. Nessel can legally shut down Line 5.

fossil fuels as Earth's climate becomes more erratic and unpredictable — has been amplified at high-profile protests of recent years involving the Keystone XL Pipeline and the Dakota Access Pipeline.

But Line 5 has become an especially hot topic because of an anchor strike that dented it in early 2018. The line is 30 inches thick, except between Michigan's Upper and Lower Peninsulas, where it has a pair of 20-inch lines that were installed as a safety feature when Line 5 was put into service in 1953, Mr. Duffy said.

The line itself was built with a goal of providing the Great Lakes more safety from oil spills. At the time, public officials wanted it to keep oil tankers from plying the water, Mr. Duffy said.

Many people saw the anchor strike as a wake-up call and a factor in last fall's Michigan gubernatorial election, especially with the Snyder administration still reeling from the Flint water crisis that became a worldwide story in 2014.

Another political dynamic is Enbridge's recent history. The company is still trying to repair its image from the 2010 Kalamazoo River oil spill near Marshall, Mich., 120 miles northwest of Toledo. That spill is one of the largest inland oil spills in U.S. history.

PBF officials said the company has taken lessons from the 2010 Kalamazoo River spill to heart.

"They have done a lot of work to repair their reputation, which was horribly damaged," said Scott Hayes, Toledo Refining's health, safety, environmental and governmental affairs manager. "Regardless what you think about Enbridge, it [the fall 2018 tunnel agreement] is a very, very good plan for Michigan and Ohio."

Spokesmen from BP and Marathon have echoed PBF's concerns when it comes to the problems they anticipate should Line 5 be shut down.

8/25/2020

Potential Line 5 closing has Toledo Refining Co., employees on edge | The Blade



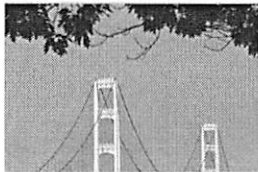
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across the Midwest,” Michael Abendhoff, BP America Inc.’s media affairs director, said.

Jamal T. Kheiry, Marathon Petroleum Corp. communications manager, said there isn’t enough capacity on alternate pipelines for refineries that are able to use them.

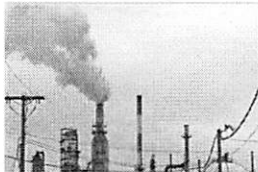
“Because the alternative pipeline routes into Michigan do not have space available to support the Line 5 volumes, other, more expensive modes of transportation would be required. Ultimately, consumers could be affected as transporting energy into Michigan becomes more expensive,” Mr. Kheiry said.

#### RELATED



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ing, report the news during  
the noon broadcast on WTVG-  
TV, Channel 13 on October  
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WHAT DO YOU THINK?



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- ☐ I think it will expand it
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NEXT

8/25/2020

PBF Toledo refinery to delay full restart after completing turnaround



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# PBF Toledo refinery to delay full restart after completing turnaround

4/6/2020

BF Energy Inc is indefinitely delaying the restart of several units including a cat cracker and a crude unit at its 170,000 barrel-per-day refinery in Toledo, Ohio, due to poor refinery economics, according to sources familiar with the matter.

The units were taken offline earlier this year as part of a plant turnaround, but since that time the spread of the novel coronavirus has sapped demand for key products including gasoline and jet fuel.

The restart of the refinery's gas plant and alkylation unit will also be delayed from their initial targeted early April restart, the sources said. Some units will be brought back online in the coming days, they said, and the refinery will continue to focus on chemical and diesel production.

PBF Energy did not respond to a request for comment.

The refinery has also drastically reduced contract maintenance workers in the plant in response concerns over the spread of coronavirus, the sources said.

Analysts have said that refineries in the U.S. Midwest and Rocky Mountains that mostly produce gasoline and have limited storage space for crude and refined products are vulnerable to shutdowns as stocks build.

Reporting by Laura Sanicola; Editing by Lisa Shumaker

## From the Archive

- Six considerations for turbomachinery control upgrades (/magazine/2018/august-2018/special-focus-fluid-flow-and-rotating-equipment/six-considerations-for-turbomachinery-control-upgrades)
- Viewpoint: "Intelligizing" the refinery for business sustainability (/magazine/2016/june-2016/columns/viewpoint-intelligizing-the-refinery-for-business-sustainability)
- Business Trends: Global petrochemical overview-Part 1 (/magazine/2016/april-2016/trends-and-resources/business-trends-global-petrochemical-overview-part-1)

8/25/2020

PBF Toledo refinery to delay full restart after completing turnaround

- Maximize petrochemicals in the FCCU to boost refinery margins, improve gasoline pool quality (</magazine/2016/february-2016/special-report-clean-fuels-and-the-environment/maximize-petrochemicals-in-the-fccu-to-boost-refinery-margins-improve-gasoline-pool-quality>)
- Business Trends: Clean fuels—a global shift to a low-sulfur world (</magazine/2016/february-2016/trends-and-resources/business-trends-clean-fuels-a-global-shift-to-a-low-sulfur-world>)
- Top seven causes for lost olefin production (</magazine/2015/april-2015/special-report-petrochemical-developments/top-seven-causes-for-lost-olefin-production>)

### Comments

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### Refiner operating at minimum rates due to COVID-19 hit

Annual reports

March 31/2020

ScanPlast

MOSCOW (MRC) -- PBF Energy Inc said it was operating its refineries at minimum rates, with throughput about 30% lower than the refiner's expectations, as coronavirus-driven travel curbs hit fuel demand, said Reuters.

Datascope

The company also announced sweeping cost-cutting measures, including scrapping its dividend, to tackle the demand shock from the virus pandemic as travel restrictions have led to grounding of flights and fewer vehicles on roads.

EquipPlast

The refiner announced pay cuts taken by company executives and employees, with Chief Executive Officer Thomas Nimbley taking a 67% cut, while the board and executive leadership have halved their compensation.

Price forecasting

The refiner expects to lower 2020 operating expenses by about \$125 million and will reduce capital expenditure for the year by \$240 million or 35%, including spending on the newly acquired Martinez refinery.

Company Profile

The company also withdrew its throughput outlook for the first quarter and 2020, and said it was suspending its quarterly dividend of USD0.30 per share. PBF also agreed to sell five hydrogen plants to Air Products and Chemicals Inc for USD530 million in cash.

Special Reports

As MRC informed earlier, US refiner PBF Energy has completed its acquisition of Shell's 157,000 bbl/day Martinez refinery near San Francisco, California. The USD1bn deal, agreed in June 2019, was completed effective 1 February 2020.

PlastGuide

Cooperation ICIS-MRC

PBF Energy and Shell have agreed to jointly move forward with reviewing the feasibility of building a proposed renewable diesel project which would repurpose existing idled equipment at the Martinez refinery to create a renewable fuels production facility. The detailed feasibility review and planning for this project is expected to continue after deal closing.

#### Our Clients

As MRC informed earlier, in March 2019, Mammoet safely completed a critical lift at Shell's Pennsylvania Chemicals Project in Potter Township, utilizing its MSG80 to hoist a 2,000 ton quench tower into position. The facility is the first major US project of its kind to be built outside of the Gulf Coast region in 20 years. Once operational, the facility will boast an ethane cracker and three polyethylene units, and is expected to employ up to 600 employees. Ethylene and propylene are feedstocks for producing polyethylene (PE) and polypropylene (PP). According to MRC's ScanPlast report, Russia's estimated PE consumption totalled 2,093,260 tonnes in 2019, up by 6% year on year. Shipments of all PE grades increased. PE shipments rose from both domestic producers and foreign suppliers. The estimated PP consumption in the Russian market was 1,260,400 tonnes in January-December 2019, up by 4% year on year. Supply of almost all grades of propylene polymers increased, except for statistical copolymers of propylene (PP random copolymers).

mrcplast.com

Author: Anna Larionova

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Tags: petroleum products, crude oil, PP, PE, ethylene, propylene.

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25.08.2020: Twin US Gulf Coast storms stir deep production cuts by energy giants



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25.08.2020: Motiva may shut largest U.S. refinery during storms Marco, Laura

25.08.2020: US chemical production up in July, says ACC

25.08.2020: LyondellBasell beats Q2 earnings estimates

25.08.2020: Petronas Chemicals, LG Chem to build plant at Pengerang complex

25.08.2020: Venezuela restarts gasoline output at Cardon refinery reformer unit

25.08.2020: EMS Group profits, sales fall on COVID-19 impact

25.08.2020: COVID-19 - News digest as of 25.08.2020

24.08.2020: Petkim posts USD20M profit in Q2 2020

24.08.2020: Indian Oil to build USD1.8-billion petchem complex at Paradip, India

24.08.2020: 3M to make N95 masks at Brockville, Ont. plant

24.08.2020: BASF enhances R&D capabilities with the acquisition of polyamide business from Solvay

24.08.2020: The materials transition could divert 382 million tonnes of plastic waste by 2040

24.08.2020: US crude stockpiles fall even as imports jump

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Price Reports	LLDPE	PP-random	Soft compound	EPS	Propylene	Extrusion Blow Molding
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DataScope				SAN	Caustic	Pipe extrusion
Price Forecast						Cable extrusion
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Special Reports						Foaming
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New Jersey Business Gateway  
Business Entity Information and Records Service  
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Status Report For: PBF ENERGY INC.  
Report Date: 8/24/2020  
Confirmation Number: 202372089044

**IDENTIFICATION NUMBER, ENTITY TYPE AND STATUS INFORMATION**

Business ID Number: 0101018969  
Business Type: FOREIGN PROFIT CORPORATION  
Status: ACTIVE  
Original Filing Date: 11/23/2011  
Stock Amount: N/A  
Home Jurisdiction: DE  
Status Change Date: NOT APPLICABLE

**REVOCATION/SUSPENSION INFORMATION**

DOR Suspension Start Date: N/A  
DOR Suspension End Date: N/A  
Tax Suspension Start Date: N/A  
Tax Suspension End Date: N/A

**ANNUAL REPORT INFORMATION**

Annual Report Month: NOVEMBER  
Last Annual Report Filed: 10/17/2019  
Year: 2019

**AGENT/SERVICE OF PROCESS (SOP) INFORMATION**

Agent: THE CORPORATION TRUST COMPANY  
Agent/SOP Address: 820 BEAR TAVERN ROAD ,WEST TRENTON,NJ,08628  
Address Status: DELIVERABLE  
Main Business Address: 1 Sylvan Way, 2nd Floor,Parsippany,NJ,07054  
Principal Business Address: 1 Sylvan Way,2nd Floor,Parsippany,NJ,07054

**ASSOCIATED NAMES**

Associated Name: N/A  
Type: N/A

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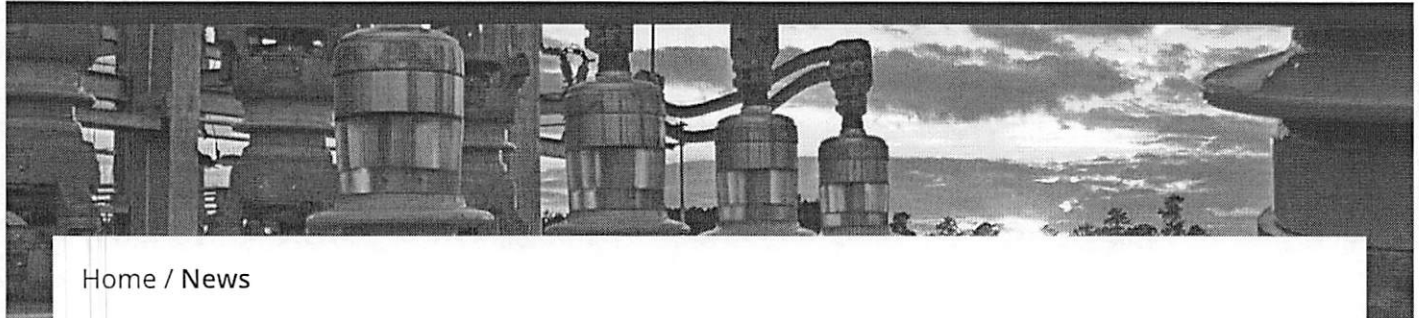
PBF To Acquire Sunoco's Toledo, Ohio Refinery - First Reserve

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## PBF To Acquire Sunoco's Toledo, Ohio Refinery

Parsippany, NJ, December 2, 2010 /Business Wire/ — PBF Holding Company LLC and its subsidiary, Toledo Refining Company LLC ("PBF") have entered into an agreement to acquire the 170,000 barrel per day Toledo, Ohio refinery and related assets from Sunoco, Inc. (R&M). PBF will acquire the facility for approximately \$200 million in cash and will enter into a note with the seller in the amount of \$200 million. In addition to the purchase price, PBF will acquire the hydrocarbon inventory at closing. In the event that the refinery exceeds certain profitability thresholds there is a participation payment of up to \$125 million. The transaction is expected to close in the first quarter of 2011.

"The Toledo acquisition provides PBF with growth in a different geographic area. This refinery is well configured to serve its marketplace. The PBF team, many of whom previously worked for Premcor, is very familiar with the mid-Continent marketplace, having managed Premcor's Lima, Ohio refinery."

The Toledo facility is a high conversion light/sweet refinery with a Nelson complexity rating of 9.2. Major process units include a fluid catalytic cracking unit, a high pressure hydrocracker, a gasoline hydrotreater, two reformers, an alkylation unit and a UDEX unit. There are approximately five million barrels of crude oil and product storage at the refinery.

Thomas D. O'Malley, PBF's Chairman, said, "The Toledo acquisition provides PBF with growth in a different geographic area. This refinery is well configured to serve its marketplace. The PBF team, many of whom previously worked for Premcor, is very familiar with the mid-Continent marketplace, having managed Premcor's Lima, Ohio refinery."

O'Malley said further, "PBF intends to continue to expand its footprint in this important strategic US industry. We are pleased that in addition to the refinery itself, Toledo comes with a team of highly experienced operators and managers."

8/25/2020

PBF To Acquire Sunoco's Toledo, Ohio Refinery - First Reserve

Thomas Nimbley, PBF's CEO, commented, "Toledo represents an important addition to the PBF portfolio. Toledo is a sophisticated refinery that is capable of producing a very high percentage of gasoline, jet and diesel fuels that are needed to serve the consumer base in the region. PBF plans to retain substantially the same workforce at the refinery. Toledo has talented and experienced employees and PBF looks forward to working with them following completion of the acquisition."

David Foley, Senior Managing Director of Blackstone, said, "Within less than one year, PBF has acquired and executed definitive purchase agreements to acquire three refineries having a total production capacity of approximately 530,000 barrels per day. Blackstone is pleased to invest our private equity capital to build a strong new company that will reinvigorate this critical component of America's energy infrastructure, providing attractive jobs to our employees and reliably delivering clean fuels to American consumers through management's focus on safe and efficient operations."

"The Toledo Refinery is a high quality facility in a very attractive refining market and adds considerable scale and diversity to PBF's existing asset base," said Timothy H. Day, Managing Director for First Reserve Corporation. "First Reserve is pleased to continue to support Tom and his team in the growth and development of PBF."

PBF's principal owners are The Blackstone Group and First Reserve Corporation.

#### About PBF Holding:

PBF owns and operates oil refineries and related facilities in North America. Our mission is to identify attractive acquisition opportunities in the petroleum refining industry and execute acquisitions that provide superior returns to our investors, provide employees with a safe and rewarding workplace, and become a positive influence in the communities where we do business. Further information is available at [www.pbfenergy.com](http://www.pbfenergy.com)

#### About Blackstone:

Blackstone (NYSE: BX) is one of the world's leading investment and advisory firms. Blackstone seeks to create positive economic impact and long-term value for its investors, the companies it invests in, the companies it advises and the broader global economy. The firm accomplishes this through the commitment of its extraordinary people and flexible capital. Blackstone's alternative asset management businesses include the management of private equity funds, real estate funds, funds of hedge funds, credit-oriented fund and closed-end mutual funds. The Blackstone Group also provides various financial advisory services, including financial and strategic advisory, restructuring and reorganization advisory and fund placement services. Further information is available at [www.blackstone.com](http://www.blackstone.com).

#### About First Reserve Corporation

First Reserve is the world's leading private equity firm in the energy industry, making both private equity and infrastructure investments throughout the energy value chain. For more than 25 years, it has invested solely in the global energy industry, and has developed an unparalleled franchise, utilizing its broad base of specialized energy industry knowledge as a competitive advantage. The firm is currently investing its most recent fund, which closed in 2009 at approximately \$9 billion. First Reserve invests strategically across a wide range of energy industry



8/25/2020

PBF To Acquire Sunoco's Toledo, Ohio Refinery - First Reserve

sectors, developing a portfolio that is diversified across the energy value chain, backing talented management teams and building value by building companies. Further information is available at [www.firstreserve.com](http://www.firstreserve.com).

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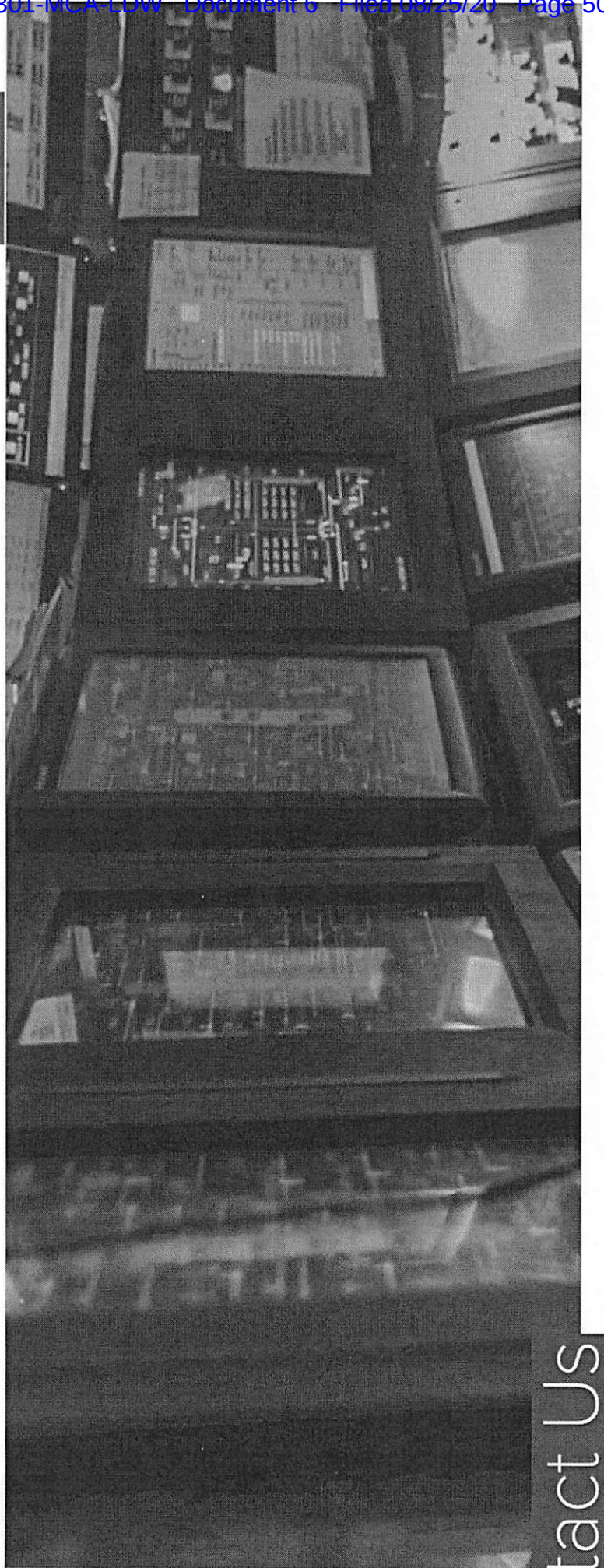
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**ASSET SALE AND PURCHASE AGREEMENT**

**\*\*\***

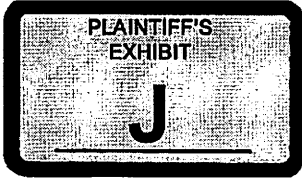
**by and between**

**Toledo Refining Company LLC, as the Buyer,**

**and**

**SUNOCO, INC. (R&M), as the Seller**

**Dated as of December 2, 2010**




**Highly Confidential**

**IN WITNESS WHEREOF**, the Parties hereto have executed this First Amendment as of the date first above written.

**SELLER:**

**SUNOCO, INC. (R&M)**, a Pennsylvania corporation

By:   
Name: Brian MacDonald  
Title: SVP and CFO

**BUYER:**


**TOLEDO REFINING COMPANY LLC**, a Delaware limited liability company

By:   
Name: Jeffrey Dill  
Title: Secretary

[Signature Page to First Amendment –Asset Sale and Purchase Agreement]





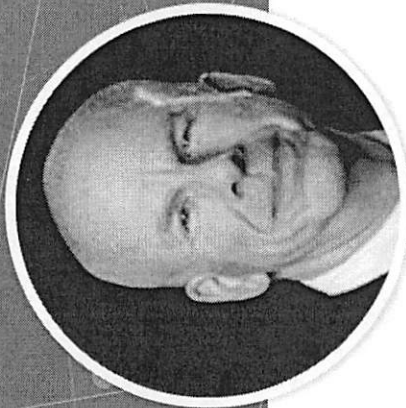


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**Jeffrey Dill · 3rd**

Senior Vice President at PBF Energy

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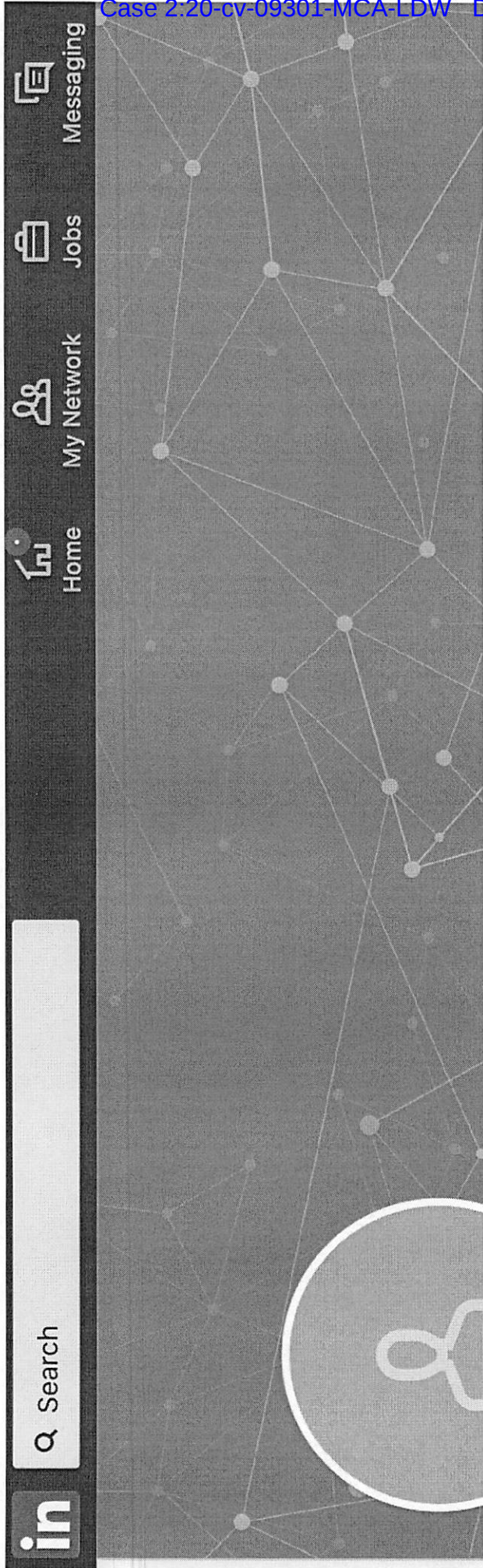




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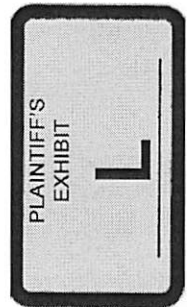
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**Marc Halley · 3rd**  
 Maintenance Manager at PBF Energy - Toledo Refining Company  
 Toledo, Ohio Area · 500+ connections · Contact info


**PBF Energy - Toledo Refining Company**

**Experience**


**Maintenance Manager**  
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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

THOMAS H. PILLSBURY, JR. AND  
MELODY PILLSBURY

Plaintiffs,

vs.

PBF ENERGY, INC. AND JEFFERS  
CRANE SERVICE, INC.

Defendant(s).

) Case No.: 2:20-cv-09301-MCA-LDW

)

) JUDGE MADELINE COX ARLEO

)

) **DECLARATION OF CORNELIA  
BRANDFIELD-HARVEY**

)

)

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)

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I, Cornelia Brandfield-Harvey, declare as follows:

1. I am over the age of 18 and suffer under no legal disability. I have personal knowledge of the matters set forth in this declaration, unless otherwise stated, and if called as a witness, I would be competent to testify to the matters in this declaration. The facts stated are true and correct.
2. I am an attorney at The Buzbee Law Firm, Houston, Texas.
3. The Firm represents the Plaintiffs in Civil Action No. 2:20-cv-09301; *Thomas H. Pillsbury, Jr., et al v. PBF Energy, Inc., et al* pending in the United States District Court for the District of New Jersey, Newark Division. I am familiar with the Exhibits attached to Plaintiffs' Response to Defendant PBF Energy, Inc.'s Motion to Dismiss for Failure to State a Claim and For Improper Venue (the "Response").
4. Additionally, on August 24, 2020 and August 25, 2020, I searched and viewed PBF Energy, Inc.'s 2018 Annual Report and printed the records attached as Exhibit A. I searched and viewed PBF Energy's webpage and printed the records attached as Exhibits B and I. On these same dates,

I viewed Mike Gidgeon's, Marc Halley's and Jeffrey Dill's LinkedIn pages and printed them for use as Exhibits C, L, and K in this Response, respectively. On these same dates I viewed news articles and printed for use as Exhibits D, E, F, and H. On these dates, I searched and viewed Secretary of State records and printed the records attached as Exhibit G. On these dates, I searched and viewed the Asset Sale and Purchase Agreement dated December 2, 2010 and printed the record attached as Exhibit J.

5. As such I have personal knowledge of these Exhibits and can attest their authenticity.

6. Accordingly, the attached Exhibits are true and correct copies of those identified in the Response.

I declare under penalty of perjury and under the laws of the United States of America that the foregoing is true and correct. Executed this 25<sup>th</sup> day of August 2020, in Dallas, Texas.

*Cornelia Brandfield-Harvey*  
\_\_\_\_\_  
Cornelia Brandfield-Harvey



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3

4 THOMAS H. PILLSBURY, JR. AND  
5 MELODY PILLSBURY

Plaintiffs,

6 vs.

7 PBF ENERGY, INC. AND JEFFERS  
8 CRANE SERVICE, INC.

9 Defendant(s).  
10  
11  
12

) Case No.: 2:20-cv-09301-MCA-LDW

) JUDGE MADELINE COX ARLEO

) **[PROPOSED] ORDER DENYING**  
) **DEFENDANT PBF ENERGY, INC.'S**  
) **MOTION TO DISMISS FOR FAILURE**  
) **TO STATE A CLAIM AND IMPROPER**  
) **VENUE**

13 Upon consideration of the Motion to Dismiss filed by Defendant PBF Energy, Inc. ("PBF  
14 Energy"), and all papers filed in support thereof, Plaintiffs' Response in Opposition to said Motion  
15 and all papers filed in support of the Opposition, pursuant to Rules 12(b)(6) and 12(b)(3) of the  
16 Federal Rules of Civil Procedure, it is hereby ORDERED that PBF Energy's Motion to Dismiss is  
17 DENIED. In the Alternative, Plaintiffs are given leave to re-plead and file an Amended Complaint.  
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19 IT IS SO ORDERED.  
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23 \_\_\_\_\_  
24 HON. MADELINE COX ARLEO, U.S.D.J.  
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